



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 10/14/2020

ORM Number: LRL-2018-107-lcl

Associated JDs: Previous AJD under LRL-2018-107, dated 10-2-2018.

Review Area Location<sup>1</sup>: State/Territory: Indiana City: Monrovia County/Parish/Borough: Hendricks/Morgan

Center Coordinates of Review Area: Latitude 39.6238 Longitude -86.4680

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Stream 1	585 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 1 is a first order ephemeral channel that flows into Stream 9. It has an OHWM width of 1 foot and depth of 3 inches. The stream is too small to have a delineated basin in StreamStats, but is estimated to drain just a few acres. The channel was observed to be covered in vegetation during the August 2020 site visit. Flow was not observed during site visits during normal conditions. The channel only flows during and shortly after rainfall events.
Stream 2	270 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 2 is a first order ephemeral channel that flows into Stream 1. It has an OHWM width of 1 foot and depth of 2 inches. The stream is too small to have a delineated basin in StreamStats, but is estimated to drain just a few acres. The channel was observed to be covered in vegetation during the August 2020 site visit. Flow was not observed during site visits during normal conditions. The channel only flows during and shortly after rainfall events.
Stream 3	821 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 3 is a first order ephemeral channel that flows into Stream 9. It has an OHWM width of 5 feet and depth of 3 inches. According to StreamStats, the channel drains only 114 acres. The channel was observed to be covered in vegetation during the August 2020 site visit. The upstream portion was also noted to have relic rock check dams from historic failed construction on the site. Flow was not observed during site visits during normal conditions. The channel only flows during and shortly after rainfall events.
Stream 9	1553 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 9 is a second order ephemeral stream. Stream 3 flows into it from the north, and Streams 1 and 2 flow into it further south. At the downstream end of the review area, StreamStats shows that Stream 9 has a drainage area of 151 acres. The stream historically flowed for a couple thousand feet south beyond the review area, where it joined a perennial tributary to McCracken Creek. Within the review area, the downstream portion of Stream 9 has been relocated to a roadside ditch running west to

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			<p>east along Westfield Boulevard, and then goes south into a culvert under the cul-de-sac, and outside the review area. This road installation and stream relocation was done between 2008-2010, when a previous development was authorized on the site. In the 2017 Cardo delineation, Stream 9 was reported as intermittent. Upon more recent review by Davey Resources in 2020, it appears the stream is now ephemeral. The previous reported OHWM width was 8 feet. However, it appears the OHWM has now reduced to approximately 1 foot wide, and cocklebur, willow, and reed canary grass is starting to dominate the bed of the channel. USACE staff confirmed these visual observations on 9/24/20. USACE and Davey Resources also discussed that it appears many tree stumps and tree tops were found in Stream 9 and the ephemeral Streams 1, 2, and 3, from when the site was logged in 2015/2016. This in addition to the relocation of part of Stream 9 into a roadside ditch, may have altered the flow regime. This information was analyzed along with a typical year assessment for the various site visit dates. The APT analysis indicates that conditions were wetter than normal during Cardno's 2017 delineation in which Stream 9 was determined to be intermittent. Thus, typical year conditions were not present. It is also possible that the previous intermittent flow determination was based on the far southern end of Stream 9, which is over 2,000 feet downstream of the current review area. The previous review area was much larger than the current review area. Thus, it is possible the entirety of Stream 9 may have been called intermittent, when the upstream portion was in fact ephemeral. During Davey Resources' assessment in August 2020, the APT indicates normal typical year conditions present. No flow was observed during the site visit, although 4.27 inches had fallen in the preceding month, with about 1 inch falling immediately prior to the site visit. Additionally, a total 14.2 inches of precipitation occurred in the preceding 3 months. For the USACE site visit in September 2020, the APT indicates normal typical year conditions were also present. No flow or even evidence of</p>



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			flow was observed in the stream. Therefore, based on all the combined information, Stream 9 is ephemeral.
Pond 1	0.599	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).  Pond 1 was excavated wholly in uplands between 1998 and 2003, during previous site grading and construction activities that were associated with a prior DA permit on the site. That work ceased and was never completed. The area was entirely uplands prior to the excavation of the pond.
Pond 7	1.432	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).  Pond 7 was excavated wholly in uplands between 1998 and 2003, during previous site grading and construction activities that were associated with a prior DA permit on the site. That work ceased and was never completed. The area was entirely uplands prior to the excavation of the pond.
Wetland 3	1.141	acre(s)	(b)(1) Non-adjacent wetland.  Wetland 3 is approximately 0.53 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv), and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 4	0.643	acre(s)	(b)(1) Non-adjacent wetland.  Wetland 4 is approximately 0.43 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv), and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 5	0.231	acre(s)	(b)(1) Non-adjacent wetland.  Wetland 5 is approximately 0.4 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv), and is therefore



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 6	4.616	acre(s)	(b)(1) Non-adjacent wetland. Wetland 6 is approximately 0.47 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 7	0.018	acre(s)	(b)(1) Non-adjacent wetland. Wetland 7 is approximately 0.49 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 10	0.024	acre(s)	(b)(1) Non-adjacent wetland. Wetland 10 is approximately 0.47 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 11	0.054	acre(s)	(b)(1) Non-adjacent wetland. Wetland 11 is approximately 0.43 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 12	0.210	acre(s)	(b)(1) Non-adjacent wetland. Wetland 12 is approximately 0.65 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 13	2.408	acre(s)	(b)(1) Non-adjacent wetland. Wetland 13 is approximately 0.63 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 28	2.309	acre(s)	(b)(1) Non-adjacent wetland. Wetland 28 is approximately 0.57 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33



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Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 34	0.113	acre(s)	(b)(1) Non-adjacent wetland. Wetland 34 is approximately 0.34 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 35	0.037	acre(s)	(b)(1) Non-adjacent wetland. Wetland 35 is approximately 0.61 miles from the nearest potential (a)(2) tributary, a perennial UNT to McCracken Creek. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv),and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [Cardno 2017 Wetland Delineation for Westpoint Business Park - report dated 3/19/2018; Davey Resources August 2020 assessment – Final Combined information dated 10/5/2020.](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [Wetland data in Cardo delineation report sufficient but stream 9 flow regime and reported jurisdictional status of some waters not accurate. Additional information from Davey Resources assessment and typical year assessment required.](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

Photographs: [Aerial and Other: Undated aerials: Cardno delineation report and Davey Resource Group 2020 Assessment. Google Earth Aerials dated 4-4-1998, 6-18-2008, 5-5-2010, 8-25-2017, 10-22-2018. Site photos: Cardno delineation August 2017, Davey Resource Assessment 8-18-2020, USACE Site visit 9-24-2020.](#)

Corps site visit(s) conducted on: [9/24/2020.](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [AJD under same ID Number was completed for part of the waters within the review area on 10/2/2018.](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [See Cardno delineation report.](#)

USFWS NWI maps: [See Cardno delineation report.](#)

USGS topographic maps: [See Cardno delineation report.](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>



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Data Source (select)	Name and/or date and other relevant information
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	StreamStats Report for Streams 3 and 9.

**B. Typical year assessment(s):** APT analysis indicated wetter than normal conditions during Cardno's 2017 delineation (August 2017), so typical year conditions were not present. The APT analysis indicated that normal typical year conditions were present at the time of Davey Resource Group's August 2020 site assessment, and during the USACE site visit on September 24, 2020.

**C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.